Virgin Records America, Inc v. Thomas Doc. 279

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CAPITOL RECORDS, INC., *et al.*,

Plaintiffs,

vs.

JAMMIE THOMAS,

Defendant.

Case No.: 06cv1497-MJD/RLE

PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM RAISING OR ASSERTING EVIDENCE OF OTHER LAWSUITS

Plaintiffs respectfully move this Court under Rules 402 and 403 of the Federal Rules of Evidence for an Order precluding Defendant from introducing evidence of other copyright lawsuits involving Plaintiffs that have nothing to do with the facts and issues to be decided in this case. In support of their motion, Plaintiffs state as follows:

BACKGROUND

Plaintiffs bring this action for infringement of their copyrighted sound recordings under the Copyright Act, 17 U.S.C. §§ 101, 106, 501-505. Specifically, Plaintiffs contend that Defendant used an online media distribution system to download and distribute Plaintiffs' copyrighted sound recordings over the Internet without Plaintiffs' authorization. Plaintiffs seek statutory damages under the Copyright Act for Defendant's infringement.

After the Court granted Defendant's Motion for Substitution of Counsel on May 20, 2009 (Order, Doc. No. 258), Defendant's new trial counsel stated in press interviews that Defendant intends to introduce evidence concerning other copyright lawsuits involving Plaintiffs. Specifically, on May 20, 2009, Defendant's counsel, Kiwi Camara, stated in an interview: "We are going for a jury verdict of zero. We are going to convince a jury that the RIAA should not bring these cases." (*See* David Kravets, "New Jammie Thomas Lawyers Vow to Put RIAA on

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Trial," *Wired.com*, May 20, 2009, attached hereto as Exhibit A.)[1] As explained in the article, Defendant's new attorneys "think the key to victory is to attack the RIAA's litigation strategy" in bringing cases like this one to protect their copyrights from online infringement. (*Id.*)

As discussed below, the trial of this case should involve the factual and legal issues associated with Defendant and her conduct, and evidence relating to other cases brought by Plaintiffs against other persons has nothing to do with the facts and issues to be decided in this case and is not admissible. Permitting Defendant to raise issues associated with other specific cases would unfairly require Plaintiffs to essentially litigate other cases in Defendant's case. No doubt, such a process only serves unfairly to prejudice Plaintiffs, confuse the issues the jury must decide, and prolong and complicate this case unnecessarily.

For all of these reasons, Defendant should not be allowed to offer such evidence at trial.

ARGUMENT

A. Evidence Of Other Cases Is Not Relevant And, Therefore, Not Admissible.

"Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. "Evidence which is not relevant is not admissible." Fed. R. Evid. 402; *Gulbranson v. Duluth, M. & I. R. R. Co.*, 921 F.2d 139, 142 (8th Cir. 1990) (reversing jury verdict due to admission of irrelevant evidence).

In this case, to establish Defendant's liability, Plaintiffs must prove (1) that they own the copyrights in the sound recordings and (2) unauthorized copying or distributing by Defendant. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *Taylor Corp. v. Four*

[1] Along with other companies that own copyrighted sound recordings, Plaintiffs in this case are member companies to the Recording Industry Association of America (RIAA).

Seasons Greetings, LLC, 403 F.3d 958, 962-63 (8th Cir. 2005); 4 M. & D. Nimmer, *Nimmer On Copyright* § 13.01, at 13-5 & n.4 (2002). To determine the amount of statutory damages, the jury may consider the willfulness of Defendant's conduct, Defendant's innocence, Defendant's continuation of infringement after notice or knowledge of the copyright, the effect of Defendant's infringement activity, and whether profit or gain was established. *See Capitol Records, Inc. v. Thomas*, Jury Instruction No. 22, Oct. 4, 2007 (Doc. No. 97); *see also Gregerson v. Vilana Fin., Inc.*, 2008 U.S. Dist. LEXIS 11727, at *15-16 (D. Minn. Feb. 15, 2008) ("In determining the proper measure of statutory damages, the Court considers what is just in a particular case, the nature of the copyright, and the circumstances of the infringement.")

Based on the foregoing, it is immediately apparent that evidence of other copyright cases involving other defendants has no tendency at all to make the existence of any fact material to this case more probable or less probable than it would be without such evidence. Evidence of other cases is, therefore, not relevant and not admissible. *See* Fed. R. Evid. 402; *Gulbranson*, 921 F.2d at 142 (irrelevant evidence is not admissible).

B. Evidence Of Other Cases Should Also Be Excluded Because Any Conceivable Probative Value It Might Have Is Substantially Outweighed By The Danger Of Unfair Prejudice, Confusion Of The Issues, Or Misleading The Jury.

Not only is Defendant's proffered evidence irrelevant, but even relevant evidence may be excluded where its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403; *see also E. I. Du Pont de Nemours & Co. v. Berkley & Co.*, 620 F.2d 1247, 1272 (8th Cir. 1980) (affirming preclusion of evidence with "dubious" relevance and significant potential for prejudice). "Unfair prejudice" in the context of Rule 403 "means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 Advisory Committee's Note. Rule 403's concern about confusion of issues warrants exclusion of evidence "if admission of the evidence would lead to litigation of collateral issues." *United States v. Dennis*, 625 F.2d 782, 197 (8th Cir. 1980); *see also United States v. Beal*, 430 F.3d 950, 955-956 (8th Cir. 2005) (refusal under Rule 403 to allow introduction of evidence about jury verdicts in unrelated cases because the evidence "would have prolonged the trial and confused the jury"); *United States v. Waloke*, 962 F.2d 824, 830 (8th Cir. 1992) (evidence of other, unrelated acts inadmissible under Rule 403 because the admission of such evidence would lead to "collateral mini trials");*United States v. Bernhardt*, 642 F.2d 251, 253 (8th Cir. 1981) (affirming trial court's refusal to allow evidence of other cases); *Peerless Corp. v. United States*, 185 F.3d 922, 928 (8th Cir. 1999) (same).

Here, any evidence of other cases proffered by Defendant is, by Defendant's own admission, intended to unfairly prejudice Plaintiffs. Indeed, Defendant's strategy now seems to be to attack Plaintiffs for having enforced their copyrights from online infringement. (*See* Exhibit A, "We think the jury is going to reject this strategy.") Plaintiffs, however, have a Constitutional right to protect their copyrights through the courts, and it would be improper for Defendant to suggest otherwise or to argue to the jury that it should find for Defendant because Plaintiffs have done so. *See, e.g., Atl. Recording Corp. v. Heslep*, 2007 U.S. Dist. LEXIS 35824, at *16 (N.D. Tex. May 16, 2007) ("Plaintiffs face a formidable task in trying to police the internet in an effort to reduce or put a stop to the online piracy of their copyrights . . . [t]he right to protect one's property rights has been recognized in this country since its birth.").

Evidence of other infringement cases should also be excluded under Rule 403 because allowing such evidence would necessarily confuse the issues, mislead the jury, and unnecessarily prolong and complicate this case. This case is about whether Defendant infringed Plaintiffs' copyrights in specific sound recordings and what amount of statutory damages should be awarded to Plaintiffs. If Defendant were allowed to introduce evidence regarding other cases, this would open the door to potential endless litigation on collateral issues as the parties go back and forth debating the merits of those other cases. This would lead to significant confusion of the issues and waste of time as the jury tries to sort out the merits of cases that have nothing whatsoever to do with the issues that must be decided in this case.

CONCLUSION

WHEREFORE, Plaintiffs request entry of an order *in limine* precluding Defendant from introducing evidence of other copyright lawsuits involving Plaintiffs.

A form of order is attached for the Court's convenience.

Respectfully submitted this 1st day of June 2009.

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